

### **REMARKS**

Applicants respectfully request reconsideration of the instant application in view of the following remarks. Claims 98-108, 110, 111 and 138-148 were previously pending in the application. Claims 112-137 have been previously withdrawn. Claims 98, 138 and 148 are independent claims.

#### **Rejections under 35 USC § 103**

Claims 98-108, 110, 111, and 138-148 have been rejected under 35 U.S.C. § 103(a) over Spallone, US Patent Number 4,959,686, ("Spallone") in view of Bezos, US Patent Number 5,715,399, ("Bezos"). Applicants respectfully submit that the cited references, taken either alone or in combination, fail to teach, disclose or suggest each of the limitations of the pending claims.

The Examiner alleges,

... Spallone et al. teaches a conditional purchase offer for the following reasons:

(1) In Spallone et al., the customer is bound to the offer. As seen in FIG 3F, when the customer places the order for an item which is in stock the customer becomes committed to the purchase (FIG. 3G).

(2) In Spallone et al., the purchase is conditional on a refusal by the seller. For example, if the item is out of stock, the order will not be processed, so the seller has the power of making the order conditional, much in the same manner as the applicant's invention, where the seller can decline the offer.

(3) In Spallone, et. al., the customer dictates the price by controlling the quantity and product type of the order (FIG 3C-3E), much in the same manner as applicant's invention where the customer dictates the price. (See, March 9, 2006 Office Action, page 5, ¶ 2)

Applicants respectfully traverse these arguments. First, Applicants submit that Spallone's system does not, in any way, bind the customer to an offer. At no time does the customer input personal identification information, and there is certainly no input of information relating to payment methods. Consequently, even after selecting items (FIG 3C), selecting quantities (FIG 3D), sending the order to the deli (FIG 3F), and receiving a printed confirmation of

the order (FIG 3G), the customer could still simply decide to forgo the items and walk away from the transaction without in any way being held accountable. That is, the customer could employ the full breadth of Spallone's system and still never enter a binding agreement to participate in any trade or transaction. There is certainly no "guaranteed payment for said goods and services if said conditional purchase offer is accepted" as recited in the independent claims. The object of Spallone's system is simply to improve shopping efficiency "by making automated shopping available to the customer at an advantageous place and time in the shopping pattern, and by handling waiting time in an advantageous manner" (abstract). That is, to allow the customer to bypass lines by supplying an order list remotely. The notion of a "guaranteed payment" to which the shopper is bound is alien to Spallone's system.

Second, Applicants respectfully submit that the inability of a supplier to supply an item that is out of stock to a customer does not teach or suggest the claim element, to "compare said conditional purchase offer with seller inventory and pricing information to determine if said conditional purchase offer is acceptable;". In particular, there is no situation in which a seller would consider pricing information in Spallone's system to determine whether to accept a customer order. If a customer orders an item in Spallone's system and the item is in stock, then the seller will fulfill the order. The pricing information is not considered in the acceptability of an order because the price is fixed by the seller, and the customer never submits an "offer price" in Spallone's system. Under embodiments of the present invention, on the other hand, it is possible for a customer to submit a conditional purchase offer for an item, the seller to have the item in stock, and the offer to still be held unacceptable by the seller based on the "offer price" and the "pricing information" considered by the seller, ultimately leaving the transaction unconsummated.

Third, Applicants respectfully submit that the manner in which the Examiner alleges that customers dictate price in Spallone's system is entirely roundabout and restrictive: that is, "by controlling the quantity and product type of an order." Under such restriction, two consecutive customers could never pay different prices for the same quantity and product type so long as the unit price *dictated by the seller* were held fixed. This is because the seller never receives "offer prices" from the customers; only quantities of selected product types. On the other hand, such a scenario is most certainly enabled by embodiments of the present invention based on the claim element, "receive a conditional purchase offer including an offer price from a customer..." In particular, a seller could agree to accept two different prices for the same quantity and product type from two consecutive customers so long as each "conditional purchase offer is acceptable" based on a comparison of each "conditional purchase offer with seller inventory and pricing information."

Finally, the Examiner asserts that, "In Spallone et al., an item which is out of stock is blocked from further orders. This is a deterrent step which prevents all future offers on the out of stock product from being fulfilled." (See, March 9, 2006 Office Action, page 6, ¶ 3). Applicants respectfully submit that blocking further orders for an item that is out of stock fails to teach or suggest, "take an action to deter the customer from submitting multiple conditional purchase offers for said goods and services, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing price." Such "conditional purchase offers containing a progressively increasing price" are not even possible within the system of Spallone since, as mentioned before, the customer never even submits a price but only a quantity. Thus, while the "action to deter" in embodiments of the present invention may prevent a customer from submitting two progressively increasing prices for a single item, such a situation would never be possible in the first place within Spallone's system, since the single item price is dictated by the seller.

Furthermore, as noted before, Spallone's system will provide items to a customer regardless of the nature of the order submitted as long as the ordered items are in stock, and thus no action to deter is taken when the items are in stock even if there are additional orders containing a progressively increasing *quantity*. Within embodiments of the present invention, on the other hand, action will be taken "limiting additional conditional purchase offers containing a progressively increasing price," even though an item may or may not be in stock.

Applicants also submit that Bezos does not remedy the deficiencies in Spallone's system with regard to the independent claims, as it merely discusses, "[a] method and system for securely indicating to a customer one or more credit card numbers that a merchant has on file for the customer when communicating with the customer over a non-secure network." (abstract).

### **CONCLUSION**

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 98-108, 110, 111 and 138-148, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity

to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-020CT2. In the event that an additional extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-020CT2.

Respectfully Submitted,  
CHADBOURNE & PARKE, L.L.P.

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